

# THE CONTRACT OF EMPLOYMENT

The Terms of Employment (Information) Acts 1994 & 2001, which have been in effect since 16<sup>th</sup> May 1994, require employers to provide employees with a written statement of certain particulars of the employees terms of employment.

## Summary Points

The employer must provide the new employee with the written statement of employment terms no later than two months after his/her start date and to existing employees within two months of their requesting it.

The Act in general applies to any person working under a contract of employment, apprenticeship, employed through an employment agency or in the service of the state.

The Act has no application to any employment where the employee has been in the continuous service of the employer for less than 1 month.

The statement must include-

1. Full names of the employer and employee.
2. Address of the employer.
3. Place of work or where there is no fixed or main place of work, a statement specifying that the employee is required or permitted to work at various places.
4. Title of the job or nature of the work for which the employee is employed. A comprehensive job description should be attached.
5. Date of commencement of employment.
6. In the case of a temporary contract of employment, the expected duration or if the contract is for a fixed term, the date on which the contract expires.
7. The rate or method of calculation of the employees remuneration.
8. Frequency of Remuneration, e.g. week/month
9. Any terms relating to hours of work (including overtime).
10. Any terms relating to leave.
11. Pensions/Medical Scheme/Sick pay (only if applicable – if sick pay is not provided this must be stated in the contract). The relevant details of the company's Personal Retirement Savings Account (PRSA) should be included.
12. Notice of termination of the contract of employment.
13. Any collective bargaining agreements.

As an alternative to providing some of the details in the statement the employer may use the statement to refer employees to certain other documents containing the particulars, provided the document is accessible to the employee.

### ***Additionally***

The Unfair Dismissals Acts 1977-2007 requires an employer to set out the procedures relating to Dismissal. This must be given in writing to each employee **not later than 28 days** after entering into a contract of employment. Moreover, the Unfair Dismissals Act lays the burden on the Employer to provide clear evidence justifying his actions if any staff member alleges Unfair Dismissal (see section 9 “Termination of Employment”).

### **Writing a Contract**

The introduction of a written agreement or contract for new employees may raise certain difficulties in some firms, particularly as regards any new terms and conditions of employment and existing industrial relations practice. In such cases, the Company is advised to state clearly that agreement on basic terms and conditions and dismissal procedures is legally necessary, and that the main purpose of the legislation is to increase the protection of employees themselves. However, the subject covered and the amount of detail in such agreements or contracts, and even their use at all in certain circumstances, will depend ultimately on the overall industrial relations climate in the Company.

A practical illustration of such a document containing the prescribed information is given on Page 6 in this section.

### **Contracts for a Fixed Term or Specified Purpose Contracts:**

- Such contracts must be in writing and must be signed by **both** the employer and employee.
- The duration of the contract/specific purpose must be clearly stated.
- A clause, such as the one below, which states that the provision of the Unfair Dismissal Act shall **not** apply when the contract expires, must be included in the written contract.

*"As this is a fixed term/specific purpose contract, the provision of the Unfair Dismissal Act, 1977 - 2007, shall not apply to a dismissal consisting solely of the expiry of this contract "cessation of the purpose of this contract".*

### **This must be incorporated into a fixed term or specified purpose contract.**

- Perpetual renewal of fixed term contracts upon expiry will result in all the successive contracts as being regarded as one continuous contract and will not be protected by the above clause.
- A clause excluding the terms of the Unfair Dismissal Act in a permanent employee's contract has no effect.

**NOTE:** Employers should note that the use of successive Contracts of Employment for periods of less than 12 months, in order to avoid the impact of the Unfair Dismissals Acts, are made ineffective by the Anti-Abuse provision of the 1993 Unfair Dismissals Act. Where a person is re-employed within three months of a contract - all service will be deemed continuous.

You should also note that the perpetual renewal of fixed term contracts may be in breach of legislation. (See “Fixed Term Employment” page 26 in this section).

### **Employees required to work outside the state**

Where an employee is required to work outside the State for a period of not less than one month, the employer is obliged to add certain particulars to the written statement and to provide the statement prior to the employee’s departure.

Particulars may include-

- The period of employment outside the state.
- The currency in which the employee is to be remunerated in respect of that period.
- Any benefits in cash or kind for the employee attendant on the employment outside the state.
- The terms and conditions, where appropriate, governing the employee repatriation.

### **Changing the Contract**

A contract of employment need not be a fixed agreement and may be altered by several means. Change can be brought about by:

- Legislation
- Agreement between the employer and the individual employee concerned
- Agreement between the employer and staff representatives
- National Agreement.

Any changes in the terms of employment must be notified to the employee, in writing, as soon as possible and not later than **one month** after the change has come about.

### **Records**

A contract may be implied or expressed either orally or in writing. It is advisable to ensure that the contract be expressed in writing, signed and dated. The employer must keep a copy of the written statement for not less than the preceding three years, or the duration of the employment, whichever is the shorter period and for 2 years after the employment has ceased.

### **Termination of Contract**

There are a number of circumstances whereby a contract may be terminated.

- Resignation. The employee resigns from the employment and this terminates the contract.
- Dismissal. A contract of employment is terminated either by the employer dismissing the employee for disciplinary or other reasons including gross misconduct, or the employee leaves the company referring to the work environment they have to work in, claiming they have no option but to resign. The latter is referred to as constructive dismissal.
- End of fixed term/specified contract.
- End of overseas assignment.
- Redundancy.

# THE FORMATION OF CONTRACTS

In all contracts, not just employment contracts, there are always terms. These terms may be expressed or implied.

Expressed terms are those which are agreed between the employer and employee either written or orally such as wages, holidays, hours of work, etc.

Implied terms are the terms, which are usually not expressly agreed between parties. These are terms implied by Common Law, Collective Bargaining Agreements or by Statute.

## Implied Terms

### Common law duties of the employee

Employees have been held to have the following implied duties to their employer

- a. **To give personal service.** In other words, employees have a duty to be ready and willing to carry out lawful duties in which they have been contracted to do during their agreed time. Under no circumstances can an employee tell another employee to perform their duties without the consent of their employer. An employer cannot direct an employee to carry out any duties which is unlawful.
- b. **To obey lawful and reasonable orders.** The employee must carry out orders as long as they are reasonable and in line with what they are contracted to do. However such orders must not place the employee in personal danger.
- c. **To act with reasonable care and skill.** Employees must perform their duties with care and carry out their duties with the skills they claim to have, diligently and efficiently.
- d. **To be loyal to their employer's business.** Employees must act honestly and uphold the interest of their employer's business and property, they must not accept bribery or make secret profits and disclose any activities made using the facilities of their employer.
- e. **Maintain secrecy.** Employees must not disclose confidential material obtained through the course of their work or as a result of their employment. Neither must they exploit their employer's trade secrets or customer contacts. However, information may be disclosed if it is in the public interest to do so, or if it is information disclosed to someone who has a proper interest to receive it.
- f. **Indemnity.** To compensate their employer. Employees may be liable to repay their employer for any loss/damage occurred as a result of a wrongful act. Should this occur the employer must ensure there is evidence of manipulation or wilful misconduct on the employee's part.

### **Common Law Duties of the Employer**

In the absence of any specific provisions in the contract of employment, the employer will then have the following implied obligations to an employee.

- a. **To provide work** – Generally there is no duty towards the employer to provide work for the employee as long as the employer continues to pay the agreed wages.

Exceptions to this are as follows

1. Where payment is by commission or on a piecework basis the employer must give the employee a reasonable opportunity to earn it.
  2. In the case of a highly skilled worker who needs to be allowed to maintain and develop his/her skills and whose reputation depends on his/her being active in his /her work.
- b. **To pay wages or remuneration.**

# **SAMPLE CONTRACT OF EMPLOYMENT**

## **Sample**

Date \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Dear \_\_\_\_\_

I am pleased to offer you an appointment to our staff. You are being offered a position in our \_\_\_\_\_ department.

This is a permanent position subject to the satisfactory completion of a probationary period.

### **Commencement Date**

Your appointment will commence on the \_\_\_\_\_ and will not continue beyond your 65<sup>th</sup> Birthday. (or some other agreed year)

### **Probationary Period**

You will be required to satisfactorily complete a six-month probationary period of employment. During the probationary period, employment may be terminated at the Company's absolute discretion. In such case you will be entitled to 1 week's notice, after the completion of 13 weeks service. The Company reserves the right to extend the probationary period, but in any case it will not be extended beyond 11 months. The company may if it wishes pay salary in lieu of notice and require that during such notice period you do not carry out any duties or attend at the work place. During the probationary period your performance will be evaluated and if successful the company will confirm the cessation of the probationary period. During the probationary period the provisions of the disciplinary procedure will not apply.

### **Conditions Precedent**

It is a condition precedent of this offer of employment that the company receives satisfactory references and evidence of your qualifications. The company will request references from previous employers. These references must be on file prior to your commencing employment with the company. You are also required to undergo a **medical examination** with the **company's doctor**. Confirmation of appointment will be dependent on the doctor confirming you are fit for employment.

To arrange your pre-employment medical, please contact Dr. \_\_\_\_\_ secretary at:

Address \_\_\_\_\_

Phone \_\_\_\_\_

**Position/Title**

Your position will be \_\_\_\_\_

Your manager will be \_\_\_\_\_

**Duties**

Your duties will include \_\_\_\_\_ and any other duties you may be assigned.

**Salary**

Your salary will be €\_\_\_\_\_ per annum, and will be paid monthly/weekly/ by cheque/direct debit etc.

The Company reserves the right to deduct from your pay any sums which you may owe the Company including without limitation to, any overpayment or loans made to you by the Company or losses suffered by the Company as a result of your negligence or breach of Company rules.

**Shift Premium**

The Company may require you to work shift or unsocial hours - in such case you will be paid a premium – details may be obtained from your Manager.

**Sunday Premium**

If you work Sunday you are entitled to a Sunday premium of \_\_\_\_\_.

**Hours of Work**

The Company operates from \_\_\_\_\_ to \_\_\_\_\_. Work hours are from \_\_\_\_\_ to \_\_\_\_\_.

You will be required to work \_\_\_\_\_ hours per week. You will be rostered on a \_\_\_\_\_ basis that will specify the days and hours you are required to work. You will be required to work \_\_\_\_\_ days per week, which may include Saturdays and Sundays.

You are expected to be cooperative in working outside these hours. Your hours of work may be changed at short notice and you are expected to comply with these changes. You will be given as much notice as is reasonably possible.

You may be required to work overtime (that is in excess of \_\_\_\_\_ hours). When this is necessary you will be given as much prior notice as possible.

Break entitlements are \_\_\_\_\_ in the morning and \_\_\_\_\_ for lunch.

Where, due to circumstances outside the control of the Company, there is insufficient work, the Company reserves the right to place staff on Lay Off or Short Time working. In such circumstances the Company will give as much notice as is practicable. Selection for Lay Off or Short Time working will be dependent on operational needs.

**Holiday Entitlements**

Your holiday entitlements will be \_\_\_\_\_ days per annum together with all statutory public holidays. It may be necessary for some staff to work public holidays. The holiday year runs from \_\_\_\_\_ to \_\_\_\_\_ and your full entitlement must be taken during

this period. Only in very exceptional circumstances will un-taken holidays be carried forward to the next period. Holidays must be requested and approved in advance. 4 weeks' notice must be given to management. No more 2 weeks annual leave may be taken at any one time except in exceptional circumstances and at the sole discretion of management. The Company will try to accommodate holiday dates, but the needs of the business may have to take precedence, particularly where inadequate notice is given. The Company reserves the right to nominate when holidays may be taken. In such cases at least one month's notice will be given.

Public Holidays shall be given in accordance with the Organisation of Working Time Act, 1997.

On termination of employment, holiday entitlement will be calculated to the nearest full month worked. If you have already taken holidays in excess of your entitlement, this will be deducted from your final salary.

### **Illness**

If you are unable to come to work due to illness you must inform your \_\_\_\_\_, or the \_\_\_\_\_ department within 1 hour of your starting time on the first day, giving some indication of the reason for absence and the likely date of return. If your absence is going to exceed two days you should forward a doctor's certificate to the company on the third day. Certificates should be furnished on a weekly basis thereafter. Absence from work on Friday and the following Monday also requires a doctor's certificate. In the event of persistent absences due to illness, we may require you to be examined by a doctor appointed on our behalf. In any event, we reserve the right to have you medically examined at any time during employment for the purposes of establishing your fitness to work.

### **Sick Pay**

The Company does not operate a sick pay scheme. The company therefore is not obliged to pay you during any absence on grounds of illness, and in such event you should avail of the appropriate Department of Social Welfare benefits. Where, at the Company's discretion you are paid, you will be required to return any social welfare benefits to the company.

### **Termination**

Notice of termination of employment by either you or the company will be \_\_\_\_\_(mth/wk) or such further period as may be required by the Minimum Notice and Terms of Employment Acts, 1973 & 2001. The company may if it so wishes pay salary in lieu of notice and require that during such notice period you do not carry out any duties or attend at the work place.

### **Pensions**

Employees who have at least 6 months service in the Company can set up or contribute to a PRSA through payroll deductions. The Company has appointed \_\_\_\_\_ as PRSA provider.



**Dismissal Procedure**

Where the Company is considering the termination of employment the employee concerned will be advised of the reasons giving cause to consider this action and afforded the opportunity to respond to such reasons, before any decision is made.

The employee will be advised prior to the meeting of the purpose of the meeting and, in the case of disciplinary action, be allowed to have a work colleague/representation with them if they so wish.

Employees have the right to appeal any decision of dismissal to \_\_\_\_\_(Manager) further information is available in the *Disciplinary Policy*.

**Confidentiality**

All information not in the public domain acquired in course of your duties must be treated as confidential both during and after termination of your employment. You are required to sign the company's standard confidentiality and conflict of interest documentation. (NOTE this should accompany a contract of employment). **See sample Confidentiality Agreement in Section 10.**

**Exclusive Service**

During your employment you must devote your time, attention and skills exclusively to the business of the company and you must use your best endeavours to promote the interests, business and welfare of the company. You will not, during the continuance of your employment engage in other work or employment for any other party without the prior written consent of the company. You must avoid outside business relationships, or business dealings with any of the company's customers/competitors.

**Severability**

In the event that any of these terms, conditions or provisions or any part thereof shall be determined to be invalid and unlawful or unenforceable, such term, condition or provision or any part thereof should be severed from the remaining terms, conditions and provisions which shall continue to be valid to the full extent permitted by the law.

**Law**

Irish Law shall govern this agreement and disputes arising under or about it should be subject to the exclusive jurisdiction of the Irish Courts.

**Terms of Employment (Information) Acts 1994 & 2001**

The provisions of this letter and appendices shall constitute notice to you of your terms and conditions of employment as are required to be given to you pursuant to the terms of Employment (Information) Acts 1994 & 2001.

I enclose herewith staff handbook, which expands in detail the terms of your employment and should be read in conjunction with the terms of this letter of offer. You should retain this copy for future reference and note that it forms a part of the terms and conditions of your employment.

**Location**

The company premises are at \_\_\_\_\_, where you shall be presently employed, however you may be relocated in the future and you will be given notice prior to this occurring.

On your first day of employment with the company, you should report to \_\_\_\_\_ at \_\_\_\_\_ am/pm at the above address.

I will be happy to go into more detail with you on the enclosed terms and conditions of employment if you wish and if you have any queries, please do not hesitate to contact me.

Please acknowledge acceptance of this offer on the terms stated by signing and returning the enclosed copy of this letter. This offer of employment will remain open until \_\_\_\_\_pm on \_\_\_\_\_date.

Yours sincerely,

\_\_\_\_\_  
Manager (on behalf of the Company)

\_\_\_\_\_  
Employee

## OPTIONAL TERMS

**Additional information as set out below can be entered into the contract of employment or entered into the Staff Handbook.**

### **Overtime**

The Company's policy is to minimise the necessity for working overtime so far as possible. Inevitably, however, situations do arise where it becomes essential. Every effort will be made to give you as much advance notice as possible. The company expects staff to work reasonable overtime as necessary. Overtime will be paid to \_\_\_\_\_ staff from the normal finishing time provided the time worked exceeds 30 minutes in any one-day.

### **Attendance**

You should be conscientious about your attendance and punctuality at work. You are part of a team and getting the work done depends on everyone being in the right place at the right time. Lack of punctuality or regular absences from work may give rise to disciplinary action, including dismissal where considered appropriate by the Company – where you are unable to attend work you must notify the Company within 1 hour of normal starting time.

### **Appearance**

You are expected to maintain standards of dress and appearances appropriate to the environment in which you work.

### **Medical Cover**

On taking up permanent employment with the company, the company will contribute €\_\_\_\_ per annum towards your membership with the Voluntary Health Insurance Board (or alternative supplier).

### **Equal Opportunities Policy**

The Company is an Equal Opportunity Employer. The aim of our policy is to ensure that no job applicant or employee receives less favourable treatment nor should they be disadvantaged by conditions or requirements which are neither justified nor relevant to the job. Selection criteria and personnel procedures will be reviewed regularly to ensure that individuals are recruited, promoted, trained and treated in all other ways purely on the basis of merit and ability to do the job for which they have applied. Should any employee believe that they are not being treated in this manner they should bring this to the attention of the person nominated in the company Harassment policy.

### **Pension and Insurance Benefit Plan**

On taking up permanent employment with the company you will be entitled to participate in the Pensions and Insurance Benefit schemes. Please find enclosed information which outlines the Pension Plan. You will be advised of further details when taking up permanent employment.

**Facilities**

Lunch facilities are available for staff use in most locations. Tea/coffee/water machines are located convenient to your working area. Your Supervisor will explain payment arrangements for use of these facilities to you. Staff are permitted to make reasonable use of the telephone for personal local calls. Long distance calls are not permitted.

**Safety**

There are established procedures and rules to ensure your safety in the case of emergency such as fire. These are posted on each floor and should be read carefully. In addition to the management's responsibility for your safety, you too have a responsibility to co-operate with the company; use any protective equipment supplied; report to the company without reasonable delay any defects in equipment, place of work or system of work which might affect your safety or welfare; not to intentionally or recklessly interfere with or misuse anything provided for safety, health or welfare of other staff members or of their work activities. First Aid facilities are available on the premises.

You should keep your work place tidy, not only for reasons of safety, but to ensure that company documents are not left lying about.

**Car Park**

Use of the company's car park is for authorised personnel only.

**Business Travel**

From time to time you may be required to travel on company business. While doing so you are covered by an insurance policy taken out by the company providing benefit in the case of death or serious accident.

If you are using your own car on company business you will be reimbursed on a per mile basis. It is a requirement of the company that before using your own car on company business you must have full comprehensive insurance cover including cover for business purposes – this should be confirmed annually. Additionally the company must be indemnified in respect of any third party claim. Prior approval from your manager is required before using your car on company business.

**Change in Personal Circumstances**

Please advise the \_\_\_\_\_ (department) promptly of any change in personal circumstances e.g. address, telephone number, etc.

**Notice of Termination**

If you decide to leave the company prior to normal retirement the company requires prior notice in writing. It is a term of your Contract of Employment that you give at least \_\_\_\_\_(Mth/wk) written notice of your departure.

The company will give, subject to the other sections of the (handbook/contract) \_\_\_\_\_ (Mth/wk) notice unless statute requires otherwise. The company reserves the right at all times to make a payment in lieu of notice and reserves the right to require you not to carry out any duties or attend at the work place for the duration of the notice period.

**Retirement**

The retirement age of the company is \_ years. (the normal retirement age is 65). Details of the Company's Retirement Plan of which you are or will be a member are set out in a separate handbook.

**Password Protection**

In the course of your work you will be required to password protect \_\_\_\_\_ systems that you have access to. These passwords are for your personal use exclusively and sharing them or allowing access to them to any other person is considered a serious breach of office rules, which will result in disciplinary action up to and including dismissal. However should any director ask you to disclose your password and you fail to do so for whatever reason, this may result in disciplinary action being taken against you.

**Confidentiality**

The confidential nature of your work requires that you never disclose any information you may acquire about the affairs of the company or any of its customers. The records and forms you work with are the property of the company and must not be shown or given to outsiders without official approval. If you have any doubts about what information this covers please consult your Manager.

Also any knowledge or suspicion of disloyalty, fraud or error or any concealed practice against the interests of the company on the part of any person must be reported to your Manager.

You should not involve yourself or assist any other person in the operation of a business or carrying out of work that may be deemed to be in conflict with the business activities of this company. If involved in work outside of working hours you must advise the company of these activities so as to ensure no conflict of interest and compliance with the provisions of the Organisation of Working time Act 1997.

Failure to comply with these requirements may result in disciplinary action.

**Bereavements**

Where the death of an immediate family member occurs the company permits a maximum of three days permitted absence. (Immediate family includes parents, spouse, children, brother or sister). The Company appreciates that every circumstance differs and will always endeavour to accommodate staff members.

**Maternity**

If you are expecting a baby you are entitled to paid (by Social Welfare) maternity leave for a minimum period of twenty six weeks Of these twenty six weeks, two weeks must be taken before the expected date of delivery and four weeks after. The remaining weeks may be taken as you wish. You may apply to alter the commencement date provided the application is for medical reasons and a certificate is produced from your Doctor.

In the event that you give birth later than expected, you can apply for additional leave after the birth so as to ensure that you will have at least four weeks after the birth. In the

event that you give birth prematurely you are also entitled to minimum period of twenty six weeks. You are required to advise the Company in writing four weeks before the commencement of your maternity leave. A Doctor's Certificate stating the expected date of delivery and a note regarding your intentions regarding the return to work must also be provided. You may also take a further sixteen weeks unpaid leave if you wish.

Notification must be given to the Company as soon as possible after the confinement, but not less than four weeks before the planned date of return to work. Notice of additional leave must be given to the Company in writing; at least four weeks before your maternity leave is due to expire. Notification of four weeks notice in writing must be provided to the company for the return to work of mothers on additional maternity leave. Full details of the Maternity Protection Act 1994 & 2004 are available from \_\_\_\_\_.

### **Adoptive Leave**

If you have applied to adopt a child and you are an adopting mother or sole adopting father, you are entitled to be paid (by Social Welfare) adoptive leave for a minimum period of 24 weeks. Leave commences on the date of placement of the child. You are required to advise the company in writing four weeks before the expected date of placement of your intention to take adoptive leave and as soon as reasonably practical thereafter to advise the Company in writing of the expected date of placement.

A copy of the Certificate of Placement must also be furnished to the Company no later than four weeks after the date of placement. In the case of foreign adoption a copy Declaration under Section (5)(1)(3)(II) of the Adoption Act 1991 Declaration must be supplied before the date of Placement. If placement is postponed the adoptive leave will be postponed provided adequate notice is given to the company. You may also take a further eight weeks-unpaid leave if you wish.

Notice of the additional leave must be given to the company of your planned date of return to work at least four weeks in advance of the planned date of return to work. Full details of the Adoptive Leave Act 1995 & 2005 are available from \_\_\_\_\_.

### **Parental Leave**

This act came into operation on 3<sup>rd</sup> December 1998 and is in addition to a mother's right to Maternity leave under the Maternity Protection Act (1994) and a father's entitlement to Paternity Leave under Flexible Working Options. Each parent who qualifies for Statutory Parental Leave has a once off entitlement to 14 weeks unpaid leave for each child covered by the Act.

Qualifying Conditions are that you must have one year's continuous service. The Statutory parental leave applies only to a child born on or after 3<sup>rd</sup> June 1996 (*this may change arising from an ECJ decision*), or in the case of an adopted child where the adoptions order was made on or after 3<sup>rd</sup> June 1996. Parental leave may only be taken up to the time the child attains eight years of age or sixteen in the case of a child with a disability. In certain adoption cases this age is extended where the child is more than eight at the time of adoption, leave can be taken within two years of the adoption order. The Parental Leave entitlement is not transferable between parents.

The leave can be for a continuous period of 14 weeks, or in separate blocks of a minimum of six continuous weeks or more favourable terms with the agreement of the employer or by working reduced hours to the limit of 14 weeks. If you are a parent with two children of qualifying ages you can only have a 14 weeks leave in any 12 months period. The only exception to this rule is for parents of multiple births; you can use all the Parental Leave entitlement in one year. You are requested to give notification as early as possible but not less than six weeks in advance to \_\_\_\_\_ of your intention to take Parental Leave. You will be requested to furnish a copy of the child's birth certificate along with your application form for Parental Leave. And as far as reasonably practical set out the duration and the manner in which it is proposed to take the leave. You will, not less than 4 weeks prior to your commencement date, be given confirmation of the leave by \_\_\_\_\_.

If you have less than one year's continuous employment and the child will be above the age by which leave must be used then, provided that you have three months continuous employment, you will then be entitled to one week for each month of continuous employment.

You may also withdraw your notice to take Parental Leave prior to the "Confirmation Document" being signed.

Prior to signing the Confirmation Document the company has the right to postpone the granting of Parental Leave in the following circumstances:

- If the granting of it at a certain time would have a substantial adverse effect on the operation of the business because of seasonal variations in the volume of work,
- The unavailability of a person to carry out the duties of an employee
- The nature of employees in the employment,
- The number of employees already availing of Parental Leave that falls within the period specified in the application.
- Any other relevant matters.

You will be consulted prior to the postponing of Parental Leave. The Parental Leave can be postponed for at most 6 months. At least 4 weeks before the intended commencement date, you will be informed in writing of the postponement.

Normally only one postponement can occur although seasonal variations in the workload may justify two postponements.

Leave will not be postponed once the "Confirmation Document" has been signed unless both you and \_\_\_\_\_ (employer) are in agreement with the postponement.

Termination of the leave will occur, if the leave is not used for the sole purpose of taking care of the child concerned. If it is established that parental leave is being abused, it will be withdrawn by notice in writing setting out the reasons why the leave is being terminated. You may also be subjected to a disciplinary process. If it is established that you are not entitled to Parental Leave, it will be refused by means of a statement in writing setting out the grounds for refusing to grant the leave.

While you are on Parental Leave, you shall retain all employment rights other than the right to remuneration and pension benefits. Annual Leave entitlement will not be adjusted in respect of Parental Leave, and you will retain the entitlement to Public Holidays which fall during a period of the Parental Leave, such holidays can be added on to the period of Parental Leave or take payment in lieu.

You shall also retain the right to return to work to the same position as previously held. Where it is not reasonably practical to return to the job held prior to the commencement of Parental Leave you will be offered suitable alternative employment which will not be less favourable than your current contract of employment.

An employee that falls ill while on parental leave and as a result is unable to care for the child may suspend the parental leave for the duration of the illness following which period the parental leave commences. This, however, is based on the forwarding of satisfactory medical evidence of the illness or condition to the employer.

### **Force Majeure Leave**

This is under the Parental Leave Act. This provides for leave with pay for urgent family reasons. This applies where illness or injury occurring to:

- A child or adopted child of the employee,
- The husband/wife/partner of the employee,
- Parent or grandparent of the employee,
- Brother or sister of the employee,
- Person to whom the employee has a duty of care (that is, he/she is acting in loco parentis),
- A person in a relationship of domestic dependency with the employee, including a same-sex partner,
- Persons of any other class (if any) as may be prescribed.

And this requires the immediate and indispensable presence of you whether at home or elsewhere.

Force Majeure Leave cannot exceed 3 days in any period of 12 consecutive months or 5 days in any period of 36 consecutive months.

Part day absences on Force Majeure Leave are regarded as one day for the purposes of the maximum number of days one can take.

Should you decide to take Force Majeure Leave you must complete the Company "Force Majeure Leave" form immediately on your return to work confirming that he/she has taken such leave and the reason for it.

### **Doctors/Dentist/Hospital Appointments**

Staff should, if at all possible, make appointments outside of normal working hours. In cases of emergency only \_\_\_\_\_ may permit time off for the above purposes.



**Examination/Study Leave**

Depending on the course of study the company will consider applications for leave of this nature on a case by case basis.

**Problems**

You will find a variety of resources and procedures to help you solve work related or personal problems. Your supervisor will be at hand to help overcome any problems that you may have. If you feel you are unable to speak with your supervisor you can speak with \_\_\_\_\_ (manager). All matters will be dealt with in strictest confidence.

**Disciplinary Rules and Disciplinary Procedure**

Infringement of a term of this Contract, or of established Company rules, can lead - depending on the gravity of the breach - to disciplinary action being taken by the Company. Where the Company is considering disciplinary action, the employee will be advised in advance of the nature of the meeting, given every opportunity to respond to any charges being made and may be accompanied by a work colleague/representative at any disciplinary meeting.

Should a matter warrant investigation, the employee may be suspended - with pay - pending the outcome of the investigation.

Should it be necessary for the Company to take disciplinary action against an employee, in normal circumstances the following stages will be applied:-

*Stage One Warning;*

This initial step is a discussion between the employee concerned and their Manager. The employee will be informed of the area of their job performance, personal conduct, attendance, or other work-related activity, that is below standard and they will be advised of the action required to correct the fault. The Manager will inform the employee concerned that this is an Official Warning, a written confirmation of which will be retained on their Personnel File and will remain effective for a period of 6 months.

*Stage Two - 1st Written Warning;*

If it is necessary to take further disciplinary action within the effective period of the date of issue of the Verbal Warning, the employee concerned will be informed of same and an Official First Written Warning will be issued to them by the Manager - a copy of which will be placed on their Personnel File. This warning will remain effective for a period of 1 year.

*Stage Three - Final Written Warning;*

If it is necessary to take further disciplinary action, within the effective period of the previous warning the employee concerned will be informed of the gravity of the matter and will be issued with a Final Written Warning by the Manager - a copy of which will be placed on the employee's Personnel File. This warning will remain effective for a period of 1 year. Where deemed necessary the employee may be transferred to another task or area.

#### *Stage Four - Dismissal.*

If it is necessary to take any further disciplinary action, within the effective period of the previous warning the employee concerned, having been informed of the situation, may be dismissed from the Company.

Generally, the steps in this procedure are progressive. However, the Company reserves the right to use any Stage in this procedure, or omit any Stage in this procedure should the misconduct be serious enough to justify same.

#### **Appeal Process**

Employees have the right to appeal any decisions made by the Company at any stage of the disciplinary process outlined above. This appeal should be in writing within 7 days of the disciplinary sanction and must be made to the Director of the Company outlining the reasons for the appeal. The Director considers the reasons for the appeal, will make the final decision as to whether the appeal is upheld and the employee will be notified in writing of this decision. In the event that the Director has been involved in the decision making, another senior member in the Company or an independent third party will hear the appeal. The person reviewing the appeal will issue a decision on the appeal within two weeks.

Where an employee is involved in Gross Misconduct, the Company may determine that the employee should be dismissed without reference to any of the Stages of the Disciplinary Procedure. Before such a determination, however, the Company will have conducted a full investigation into the matter and the employee may be suspended - with pay - pending the conclusion of such an investigation. Acts of Gross Misconduct are construed as being deliberate acts by you or the negligent failure by you to act, to the detriment of the Company.

Examples of Gross Misconduct are as follows:-

- Gross Incompetence/Negligence;
- Physical violence or threatening behaviour;
- Deliberate failure to carry out instructions;
- Deliberate misrepresentation;
- Bullying / Intimidation / Harassment / Discrimination;
- Deliberate damage to Company property;
- Falsifying Company documentation;
- Deliberately poor work performance;
- Sexual Harassment;
- Consuming or being under the influence of alcohol, drugs, or other abusive substances whilst at work;
- Sleeping whilst on duty;
- The taking of Company property without authorisation;
- Willful/deliberate absence from duty;
- Breach of confidentiality
- Flagrant/Deliberate disregard of Safety/Health/Hygiene precautions/procedures likely to endanger any person.

(This list is not exhaustive)

**Grievance Procedure**

Employee grievances should be first brought to the attention of the employee's Manager. If it is inappropriate to discuss the issue of concern with that person, the matter may be discussed directly with the next senior Manager. A work colleague may accompany the employee during a grievance hearing if desired.

A report of the discussion will be issued to all present. The Manager hearing the complaint has a responsibility to attempt to resolve the issue within 48 hours.

Should the matter remain unresolved or the response is not adequate, the issue will be forwarded to the next senior Manager.

Should the matter remain unresolved or the response is not adequate, the issue will be forwarded to the Company Director.

Failure to resolve the issue at this stage leads to a meeting between the Company and their Representatives, and the employee and their Representative. The Director will make the final decision on grievances which are not resolved to the satisfaction of the employee.

A decision by the Director may be appealed to a Rights' Commissioner, Employment Appeals Tribunal or the Labour Court as appropriate.

Any instructions that may be issued which give cause for query/grievance should be carried out – albeit under protest – pending the matter being dealt with through the grievance procedure.

No Industrial Action of any kind should be taken by any member of staff until the Grievance Procedure has been fully completed, a recommendation has been issued and then only after two weeks' notice in writing.

Should a grievance arise from any form of harassment or intimidation, the employee has a duty to inform his/her Manager. Grievances of this nature will be dealt with as per the Company Bullying and Harassment policy and procedure.

**Company Property**

Company electronic equipment are critical assets that are intended for business use. Electronic files and communications created, stored, sent or received through company systems/equipment belong to the company.

System users are expected to be responsible, considerate and ethical in using company systems, to protect valuable company information and to exercise prudent judgement. Misuse of company systems may result in restriction or termination of access privileges and other disciplinary action, up to and including termination.

**Monitoring**

No system user can have any expectation of privacy as to the contents of any documents produced on Company equipment, e-mail communications, the nature of the system user's Internet usage or any other use by any individual of company systems. The Company has the right, but not the duty, to intercept, divert, discard, access or review the contents of any e-mail or voice mail message, electronic communications or files, or any other information created on, transmitted over or stored in Company or service provider systems, whether incoming or outbound, and whether at the time of transit or afterward.

The Company reserves the absolute right to conduct reviews of computer use.

The Company may specifically monitor sites visited by system users on the Internet, chat rooms and news groups, as well as material downloaded or loaded from or to the Internet. The company reserves the right to disclose to persons outside of the company or otherwise to use the contents of e-mail and other electronic communications of system users for any of the foregoing purposes, as well as to comply with or assist law enforcement officials or legal authorities.

Encryption may be employed by system users only if authorised by the company. The type of encryption software used by system users must also be approved by the company.

**Lay-off/short-time working**

The company reserves the right to lay you off or reduce your working hours where, through circumstances beyond its control, it is unable to maintain you in employment. You will receive as much notice as is reasonably possible prior to such action. You will not be paid during the lay-off period. You will be paid for hours actually worked during periods of short-time working.

**Data Protection**

As part of your terms and conditions of employment, you give the company permission to collect, retain and process information about you. This information will be relevant to your employment in the company and will be used so that we can monitor our compliance with the law and best practice in terms of equal opportunity and non-discrimination. The information that we hold will be checked with you from time to time to ensure that it remains up-to-date.

**Electronic /Telephone Communication**

Employees are given access to the use of the internet, telephones and other equipment to enable them to carry out the business of the company and not for personal use. Employees are advised that such equipment is monitored on an ongoing basis to ensure that they are not being abused or used for a purpose that would be detrimental to the business, customers or work colleagues. Employees using such equipment accept that the facilities will be monitored by the company as deemed necessary and that unauthorised use will result in disciplinary action being taken including termination of employment. Employees are advised to familiarise themselves with the company policy which is attached to this document. (See sample policy p.25)

**Security**

The company reserves the right to search any employee, their property and vehicles and lockers at any time whilst they are at, coming to or leaving work whether it be on the company premises or elsewhere. Refusal to comply with a search request may be deemed serious misconduct.

**Health and Safety**

Employees are reminded that they have a statutory duty to observe all Health and Safety rules and take all reasonable care to promote the Health and Safety at work of themselves and their fellow employees. Willful breaches of the Health and Safety policy will be dealt with through the disciplinary procedure.

**Bullying and Harassment Policy**

It is the policy of the company that the work environment gives all employees the freedom to do their work without having to suffer bullying, intimidation, harassment or sexual harassment. The Company is committed to supporting the rights of all its employees to be treated with dignity and respect.

In order to promote this policy, training in this area will be provided during induction.

All personnel must accept that this form of discrimination creates an intimidating and threatening work environment, which can:

- Affect the integrity of people at work
- Adversely affect job performance
- Make the recipients fearful of going to work
- Cause recipients to leave their employment
- Seriously affect recipients health by causing depression, stress and loss of self esteem

This policy extends to bullying, intimidation, harassment and sexual harassment by employers, employees, and non-employees such as contractors, customers, etc.

All personnel should be aware that bullying, intimidation, harassment or sexual harassment is unacceptable and will be considered to be Gross Misconduct. All personnel are therefore encouraged to be vigilant to prevent this type of conduct, and are required to comply with this policy.

***Management Responsibility***

All management personnel are required to commit to this policy, to implement the policy and to set an example of appropriate standards of behaviour by treating all in the workplace with courtesy and respect, promote awareness of the Company's policy and complaints procedure, be vigilant for signs of harassment and take action before a problem escalates, ensure that an employee making a complaint is not victimised for doing so monitor and follow up on the situation after a complaint is made so that the harassment or sexual harassment does not recur.

Please be assured that all complaints will be treated seriously, and will be attended to immediately. The complaint will be treated confidentially, as far as possible, with due sensitivity, and will be discussed with the complainant in private. The complainant is assured that the complaint will be fully investigated by the Company.

At no time will the Company tolerate any **victimisation** of a complainant or a witness, and will view any such attempts as Gross Misconduct.

If, following investigation, the complaint of discrimination is substantiated or otherwise considered well founded, the Company designated investigator will endeavour to arrange a satisfactory resolution of the complaint.

Employees who believe they are being subjected to bullying, intimidation harassment or sexual harassment should report the problem as early as possible to their immediate Supervisor. If for any reason this is not appropriate, the complaint may be made to the Managing Director.

**Harassment** occurs where conduct related to any of the nine discriminatory grounds (sex, age, disability, membership of the travelling community, family status, marital status, sexual orientation, race and religion) that is unwelcome and has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

**Bullying** is defined as: repeated inappropriate behavior, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behavior described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying.

Examples of some forms of bullying, intimidation, harassment.

- Any aggressive behaviour by a Manager, Colleague, Employee
- Any repeated verbal harassment
- Any physical harassment
- Any personal insults and name calling
- Persistent criticism
- Persistent "picking" on a person for the butt of a joke, horseplay, uncomplimentary remarks or other behaviour likely to cause offence.
- The maligning or ridiculing of a person directly to others by rumour, gossip, ridicule and / or innuendo
- Unfair delegation of duties and responsibilities
- Intimidation and threats in general
- Social exclusion or isolation
- Manipulating the nature of the work or the ability of the victim to perform the work for example by withholding information or setting meaningless tasks.

## Examples of Sexual Harassment

- Any unwelcome verbal advance
- Any unwanted pressure for social contact
- Sexually derogatory statements
- The display of sexually suggestive or degrading objects, pictures or calendars in the workplace
- Sexually discriminatory remarks, or innuendo, or jokes made by someone that is offensive or objectionable to the recipient, or which causes the recipient discomfort, humiliation, or which interferes with their job performance.
- Any unwelcome physical advance, which includes:-
- Unnecessary touching, groping, pinching, patting, fondling, or kissing
- Sexually aggressive or derogatory remarks
- Leering at a person's body
- Compromising invitations
- Unwelcome sexual advances
- Demands for sexual favours
- Sexual assault or rape (where civil/criminal proceedings may also be appropriate)

Sexual Harassment is defined as “Unwanted” conduct of a sexual nature or other conduct based on sex affecting the dignity of men and women at work.

It is the unwanted and unwelcome nature of sexual harassment, which distinguishes it from behaviour which is welcome and reciprocal. A single incident of sufficiently outrageous behaviour will suffice – it does not necessarily have to be repeated. It should also be noted that it is the impact of the conduct on the recipient and not the intent of the perpetrator that determines whether the behaviour is acceptable.

Bullying, intimidation, harassment and sexual harassment may occur outside the workplace e.g. at a Company Meeting, or Christmas Party, whilst attending a conference on behalf of the Company. (The degree of control available to the Employer in the particular circumstances would be a relevant factor.)

### ***Company Procedure***

What should you do if you are being bullied, intimidated, harassed or sexually harassed?

It is up to the employee to decide what behaviour is unwelcome irrespective of the attitude of others to the matter.

- Keep a record of individual incidents as they occur
- Make the harasser aware that the behaviour is unwelcome and offensive. You may request another Manager to be present while you discuss the issue with the harasser. This will be an informal meeting with a view to reaching an immediate resolution. Any failure to reach a resolution at this stage will require a formal complaint from the employee and will be dealt with as outlined below.

- If it is too difficult or intimidating to approach the harasser yourself, the approach could be made on your behalf by a Manager or a Company Director. A formal complaint is not required at this stage.

A formal complaints procedure is in place for a situation where:

- the problem could not be resolved informally
- the problem continues despite the harasser being made aware of the problem either directly by the employee or via the informal process
- the alleged harassment or sexual harassment is too serious to be dealt with under the informal procedure
- the harassment continues after the informal procedure has been followed.

A formal complaint may be lodged by the employee or his/her Manager. The complaint must be in writing and received no later than 3 weeks after the last incident took place. The Manager will advise the alleged harasser of the complaint both verbally and in writing within 24 hours of receipt of the complaint.

The complainant and the alleged harasser will be informed of:

- how the complaints procedure is operated
- any relevant time limits
- their right to be accompanied by a representative at any meeting relating to the allegation
- that the complaint must be in writing
- the alleged harasser's right to receive details of the complaint in writing
- the right to appeal any decision made by the investigation team to the Employment Appeals Tribunal or Rights Commissioner.

The alleged harasser will be given 72 hours to consider the complaint and any documentation provided in relation to the complaint, at which point he/she will be given an opportunity to respond to the allegation.

If the allegation is denied, the Manager will conduct a full investigation of the incident, including interviews with witnesses. The Manager may request a Senior Director to assist in the investigation depending on the nature and severity of the complaint. The investigating team will issue a written report outlining its findings and reasons for its final decision.

Where the complaint is upheld against an employee, the report will recommend whether the Company Disciplinary Procedure should be invoked.

Where the complaint is upheld against a non-employee the report will recommend appropriate sanctions against the non-employee or his/her employer which could extend where appropriate in the circumstances to:

- exclusion of the individual from premises
- suspension or termination of service
- suspension or termination of a supply service or other contract.



Those conducting the investigation will not be connected to the allegation in any way and will not be involved in any appeal hearings. The Company will endeavor to conclude the investigation within four weeks where possible. Records will be held of the complaint, meetings, interviews, etc.

### ***Disciplinary Action***

On receipt of a formal complaint a full investigation will be conducted as per the company's disciplinary procedures. Disciplinary action may involve dismissal, suspension, or relocation of the bully / harasser together with an apology from the harasser for his/her conduct to the complainant – if the complainant so wishes. The complainant will not be relocated except at this/her own request. Records will be held as per the Company Disciplinary Procedure.

Details of any action taken will be entered on the harasser's Personnel File and appropriate records of the complaint and the resolution of the same will be maintained. Disciplinary action will also be taken against any person found to be victimising or otherwise bullying or harassing a complainant or a witness to harassment, with appropriate records placed on that person's Personnel File.

Any company member requiring information or advice on this policy should contact their Manager.

### **Electronic /Telephone Communication Policy**

Where appropriate to your job needs, employees may be given access to the Intranet and/or Internet. For those who do not have daily PC access, occasional access will be arranged, as necessary, by management.

All PC access will be through passwords, and no individual is permitted onto the system using another employee's password. Employees are not permitted to share their password with anyone inside or outside the company. Individuals will be allowed to set their own passwords, and must change them as frequently as requested by the system set-up requirements.

### ***Internet***

The internet is a valuable business tool which gives access to an array of information. In order to prevent it becoming a time-consuming distraction from business activities, employees are not permitted to use it except for business related reasons during working hours. Access to appropriate sites for business purposes is not restricted and managers must define what are business related requirements for specific employees, to make sure there is clarity in relation to what they are permitted to access. Access to any inappropriate, pornographic or obscene sites, or sites with the risk of such material, is prohibited at all times.

No employee is permitted at any time to download files from the Internet without the permission of the IT department. This is to protect the company business systems, reduce

the risk of viruses and ensure that large amounts of storage space are not taken up with unnecessary files.

Outside of working hours, occasional access may be permitted. Prior permission should be sought from a manager, who will monitor the level of activity. As Internet access is expensive, employees are required to restrict the time which they spend on it.

### ***Harassment***

The company has provided access to the Internet for business purposes. The practice of downloading text, pictures, jokes, etc, from the Internet and distributing them via e-mail to other employees or persons outside the Company, is prohibited. The content of these downloads may be found offensive by certain employees or others and could be regarded as harassment or bullying. As such they will result in disciplinary action on the offending employee and risk possible prosecution under the Employment Equality Act 1998. Accessing or storing any form of electronic file, record or communication which could be deemed to harass or discriminate based on age, gender, race, religion, disability, marital status, family status, sexual orientation or membership of the travelling community is totally unacceptable, and will be subject to the disciplinary process.

### ***Virus Protection***

The company has virus protection software installed on all company hardware but there is still a high risk of viruses being received from external electronic communications, in particular from unknown sources. All files entering the company via the Internet must be virus checked prior to their transfer for use to any company machine. This includes all e-mail attachments. If you receive an external e-mail from an unknown source or a message which you feel is wrongly delivered, do not open it and contact a member of the Helpdesk or I.T. Department immediately.

### ***Email and Contents***

The primary purpose of the company's e-mail system is to promote effective communication on business matters and this should not be abused. In order to prevent a loss of productivity, personal e-mails must be kept to a minimum and only accessed outside of working hours.

While e-mail is a fast and efficient method of business communication, employees must not overlook the fact that it has the same legal effect as written communications. Due to the permanent nature of e-mails and the legal implications to both the company and employees, messages should be written and formatted in the same manner as standard written company communications. The wording, tone and language should be concise and carefully prepared by employees in order to avoid ambiguity, inaccuracy, claims of defamation, breach of confidentiality and the possibility of offending anyone.

### ***Telephone***

Telephones are to be used for Company business only. The company recognises that from time to time an occasional personal call may have to be made. However, excessive use of the company telephones for non-business use is not permitted.

***Monitoring***

Managers are authorised to monitor and record the activities of all users on the system. It is our objective that such monitoring will be required on an on-going basis, and will be occasionally used to audit practices. However, the company retains the right to monitor each individual's e-mail, internet and PC activity to ensure the protection of all employees and that there is no abuse of privilege.

***Abuse and Disciplinary Procedure***

Any employee found to be abusing the company electronic communication system, including e-mail and internet use, or not operating in line with this policy, will be subject to the company disciplinary action up to and including dismissal.

***Notification of changes in the employees Terms of Employment***

The employee will be notified in writing no later than one month of any change in their terms of employment. This written notification will include the nature and date of the change. This written notification does not apply if the change is as a result of a change in legislation.

# FIXED-TERM EMPLOYMENT

The Protection of Employees (Fixed Term Workers) Act 2003 came into operation in July 2003. The purpose of the Act is:

- (1) to provide for the improvement of the quality of fixed-term work by ensuring the application of the principle of non-discrimination (i.e. fixed-term workers may not be treated less favourably than comparable permanent workers) and
- (2) provide for the removal of discrimination against fixed-term workers where such exists and the establishment of a framework to prevent abuse arising from the use of successive fixed-term employment contracts.

## **Who is covered by the Act?**

In general, the Act applies to any Fixed-Term Employee

- working under a contract of employment
- holding office under, or in the service of, the State including members of the Garda Síochána, civil servants and employees of any health board, harbour authority, local authority or vocational education committee.

The Act does not apply to agency workers placed by a temporary work agency at the disposition of a user enterprise; apprentices; a member of the Defence Forces; a trainee Garda or a trainee nurse. However, the Act applies to agency workers employed directly by an employment agency.

## **Definition of a ‘fixed term’ worker**

The term fixed-term employee means a person who has entered into a contract of employment with an employer where the end of the contract is determined by an objective condition such as

- Reaching a specific date, or
- completing a specific task or
- the occurrence of a specific event.

The term “fixed-term employee” does not include employees in initial vocational training or in apprenticeship schemes nor employees with a contract of employment concluded within the framework of a publicly-supported training, integration or vocational retraining programme.

## **Permanent Employee**

A permanent employee means an employee who is not a fixed-term employee.

### **Comparable Permanent Employee**

An employee is a comparable permanent employee in relation to a fixed-term employee if:

- (a) the permanent employee and the fixed-term employee are employed by the same or associated employer and one of the conditions referred to in (i), (ii) or (iii) below is met,
- (b) where (a) above does not apply (including a case where the fixed-term employee is the sole employee of the employer) the permanent employee is specified in a collective agreement, being an agreement that for the time being has effect in relation to the relevant fixed-term employee, to be a comparable employee in relation to the fixed-term employee, or
- (c) where neither (a) nor (b) above apply, the employee is employed in the same industry or sector of employment as the fixed-term employee and one of the conditions referred to in (i), (ii) or (iii) below is met.

The following are the conditions (i), (ii) and (iii) referred to above –

- (i) both employees perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work,
- (ii) the work performed by one of the employees concerned is of the same or a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each, either are of small importance in relation to the work as a whole or occur with such irregularity as not to be significant, and
- (iii) the work performed by the relevant fixed-term employee is equal or greater in value to the work performed by the other employee concerned, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

The comparable permanent employee can be either of the opposite sex to the fixed-term employee concerned or of the same sex as him or her.

### **Conditions of Employment**

The Act provides that a fixed term employee shall not be treated less favourably in respect of his/her conditions of employment than a comparable permanent employee (except in specific circumstances, see ‘exceptions’ below).

For example,

- (a) **Overtime payment.** If a comparable permanent employee is paid overtime, then a fixed term employee, who compares himself/herself with that comparable permanent employee, is also entitled to overtime payment at the same rate as the comparable permanent employee.
- (b) **Holiday entitlements.** The holiday entitlement of a fixed term employee is related to the holiday entitlements of a comparable permanent employee, subject to the minimum legal entitlements under the Organisation of Working Time Act 1997.

## **Exceptions**

A fixed term employee can be treated less favourably than a comparable permanent employee in the following circumstances:

(a) **Objective Grounds.** The Act provides that a fixed term employee may be treated in a less favourable manner than a comparable employee where such treatment can be justified on objective grounds i.e. it is based on considerations other than the status of the employee as a fixed term employee. For instance, if the terms of the fixed term employee's contract of employment, taken as a whole, are at least as favourable as the terms of the comparable permanent employee's contract of employment.

(b) **Pensions.** The right not to be treated in a less favourable manner than a comparable permanent employee shall not apply, in relation to any pension scheme or arrangement, to a fixed-term employee who normally works less than 20 per cent of the normal hours of the comparable employee.

## **Objective Conditions Determining a Fixed-Term Contract**

The Act provides that a fixed-term employee shall be informed in writing by his or her employer as soon as practicable of the objective condition determining the contract i.e. whether it is

- (i) Reaching a specific date,
- (ii) Completing a specific task, or
- (iii) The occurrence of a specific event.

## **Objective Grounds Justifying a Renewal and Failure to Offer a Contract of Indefinite Duration**

The Act provides that where an employer proposes to renew a fixed-term contract the employee shall be informed in writing, not later than the date of renewal, of the objective grounds justifying the renewal of the fixed-term contract and the failure to offer a contract of indefinite duration i.e. a permanent contract.

**Note:** *An employer cannot employ an employee on a series of fixed-term contracts indefinitely*

## **Perpetual renewal of contracts**

Where an employee is employed by his or her employer or associated employer on 2 or more continuous fixed-term contracts, the aggregate duration of those contracts may not exceed 4 years.

Where a term of an employment contract purports to limit the term of the employment contract of either category of employee mentioned above, in contravention of the above rules, that term shall be void and of no effect and the contract concerned shall be deemed to be one of indefinite duration – i.e. a permanent contract.

The above-mentioned rules do not apply where there are objective grounds justifying the renewal of a contract of employment for a fixed term only.

**Permanent vacancies and training opportunities**

In order for a fixed-term employee to have the same opportunity as other employees to secure a permanent position, an employer shall inform him or her in relation to relevant vacancies which occur in the undertaking. This information may be provided by means of a general announcement at a suitable place in the employee's place of employment. However, as regards access by a fixed-term employee to appropriate training opportunities, the Act provides that such access shall be provided by an employer as far as practicable.

**Disputes**

A dispute in relation to an entitlement under the Act may be referred to a Rights Commissioner for adjudication. A decision of the Rights Commissioner can be appealed to the Labour Court for a legally binding determination.

# PART TIME WORKERS

Under the Protection of Employees (Part Time Work) Act 2001 part-time workers are entitled not to be treated any less favourably for the purposes of legal protection and conditions of employment as 'Comparable Full Time Employees'.

A part-time worker is classified as someone whose normal hours of work are less than the normal hours of work of a comparable employee in relation to him/her.

A comparable full-time employee is defined as an employee to whom a part-time employee compares himself/herself where the following conditions are met:

- An employee employed by the same or associated employer
- An employee who is carrying out the same or similar work under the same or similar conditions or they are interchangeable.
- The work performed by the part time employee is of equal or greater value to that performed by the other employee

A part time employee may be treated less favourably on two grounds:

1. Where there are objective reasons for the different treatment and the reason does not relate to the personal status of the part time employee.
2. The act does not extend to pensions where the hours worked by the part time employee are less than 20% of the comparable employee's hours.

Employers are not obliged to employ part time staff nor change a person's contract from full-time to part-time. However, where the employer has exercised that discretion in the past then they will be expected to act reasonably when considering any subsequent requests of a similar nature.

## **Disputes**

Naturally an employer may not penalise an employee for exercising their rights under this Act. Where an employee has a grievance they may refer the case to a Rights Commissioner within 6 months of alleged date of the offence (12 months in exceptional circumstances). Where they find a case has been proven the Rights Commissioner may make an award of up to two years wages to the complainant.

An appeal of a Rights Commissioners decision may be made within 6 weeks of a recommendation being made.



# THE EMPLOYMENT OF CHILDREN AND YOUNG PERSONS

The Protection of Young Persons (Employment) Act 1996 governs the employment of children and young persons. The Act provides for a minimum age of entry into employment; limits working hours; stipulates rest intervals and prohibits night work.

## Summary Points

- A 'young person' is a person aged 16 years but less than 18 years, and a 'child' is a person under 16 years of age or the school leaving age, whichever is higher.
- It is prohibited to employ a person under school-leaving age. However, a child over 14 years may be employed to do a limited amount of light, non-industrial work during school holidays. Such work must not be harmful to their safety, health or development.
- The employer must obtain the written permission of parents/guardians before employing a child aged 14 - 16 years, in addition to obtaining the child's birth certificate.
- Prior to the employment of a young person aged 16 or 17 the employer must obtain a birth certificate.
- Employers must be careful that where a young person holds more than one job, the total number of hours from the combined employment must not exceed the maximum set out by law. Where the maximum hours are exceeded the employee, parents and employer may be guilty of an offence.

## Employment of Children during School-term

- The employment of children under 15 years of age is **not permitted** during school-term.
- A 15 year old child can be employed for a maximum of 8 hours per week.
- Children aged 15 may be employed as part of an approved training programme (e.g. FAS) and an employer may employ a 14 or 15 year old who is a full-time second level student as part of a work experience or educational programme. **The maximum working week is 40 hours a week, with an 8 hour working day.**

## Employment of Children during School Summer Holidays

- Outside school term 14 & 15 year olds are allowed work for a maximum of 35 hours per week and no more than 7 hours per day.
- 16-17 year olds are allowed work a maximum of 40 hours per week and no more than 8 hours per day.
- During school summer holidays, under 16s must have at least 21 continuous days free from work.

- Time off and rest breaks
- **Under 16s**
  - Maximum working day - 7 hours per day
  - Maximum working week - 35 hours per week
  - Half hour rest break after - 4 hours work
  - Daily rest break - 14 consecutive hours off
  - Weekly rest break - 2 days off, as far as practicable to be consecutive
- **16 – 17 year olds**
  - Maximum working day - 8 hrs
  - Maximum working week - 40hrs
  - Half hour rest break after - 4½hrs work
  - Daily rest break - 12 consecutive off
  - Weekly rest break - 2 days off, as far as practicable to be consecutive

### **Early Morning & Night Work**

- It is prohibited to employ under 16s before 8am and after 8pm with or without school the next day (**note** – 14 and 15 year olds are not allowed work during school term).
- It is prohibited to employ 16 and 17 year olds before 6am and after 10pm.  
During the school holidays and where there is no school the next day, children age 16yrs and 17yrs may work up to 11pm at night **ONLY** with the approval of the Minister for Enterprise, Trade & Employment. Where the child is allowed to work up to 11pm the morning ban on work then moves forward to 7am.

### **Records**

Employers must keep specified records for their workers who are under 18 years of age, with the following details - full name, date of birth, starting and finishing times for work, wage rate and total wages paid to each employee.

These records must be kept for at least 3 years in the place of employment.

### **Employers Duties**

- Employers must see a copy of the birth certificate or other evidence of age, and receive written permission of a parent or guardian.
- Official summary of the protection of Young Person Act should be given to employees under the age of 18 years, together with other details of their terms of employment within one month of taking up the position.
- The official summary of the act must be displayed at the workplace where it can be easily read.

**NOTE: A code of practice concerning the employment of young persons in licensed premises is available from the Department of Enterprise, Trade & Employment, [www.entemp.ie](http://www.entemp.ie)**

# HOURS OF WORK

The Organisation of Working Time Act 1997 sets out statutory rights for employees in respect of rest and maximum working time. These rights apply either by law as set out in the Act, in Regulations made under the Act or through legally binding collective agreements. These agreements may vary the times at which rest is taken or vary the averaging period over which weekly working time is calculated.

The restrictions on hours of work and rest breaks do not apply to:

- members of the Defence Forces, the Garda Síochána, junior hospital doctors, workers at sea,
- those who control their own working hours or
- persons employed by a close relative in a private dwelling house or farm in or on which both reside, are not covered by the rest and maximum working time rules.

## Maximum Weekly Working Time

The maximum average working week is 48 hours. Averaging may be balanced out over a 4, 6 or 12 month period depending on the circumstances.

The 48 hour net maximum working week can be averaged according to the following rules:

- For employees generally - 4 months
- For employees where work is subject to seasonality, a foreseeable surge in activity, or
- where employees are directly involved in ensuring continuity of service or production - 6 months
- For employees who enter into a collective agreement with their employers which is approved by the Labour Court – up to 12 months.
- In the case of young people under 18, hours of work are fixed by the Protection of Young Persons (Employment) Act 1996.

**Note:** Working time is net working time i.e. exclusive of breaks, on call or stand-by time. (Time working when on call/standby is counted).

Working time is defined in the Act as time when the employee is at his or her place of work or at the disposal of the employer and carrying out the duties or activities of his/her employment.

## Rest Periods

Every employee has a general entitlement to:

- Daily Rest Period - 11 consecutive hours daily rest per 24 hour period.
- Weekly Rest Period - One period of 24 hours rest per week preceded by a daily rest period (11 consecutive hours).

**Rest breaks**

- 15 minutes where 4 and a half hours have been worked.
- 30 minutes where 6 hours have been worked, which may include the first break.
- Shop employees who work more than 6 hours and whose hours of work include the hours 11.30am - 2.30pm must be allowed a break of one hour which must commence between the hours 11.30am - 2.30pm.

**Note:** These rest periods and rest intervals may be varied if there is a collective agreement in place approved by the Labour Court or if a regulation has been made for a particular sector. If there are variations in rest periods and rest intervals under agreements or in the permitted sectors, equivalent compensatory rest must be available to the employee.

**Night Workers**

Night time is the period between midnight and 7am the following day. Night workers are employees who normally work at least 3 hours of their daily working time during night time and the annual number of hours worked at night equals or exceeds 50% of annual working time.

The maximum night time work for night workers is generally,

- 48 hours per week averaged over 2 months or a longer period specified in a collective agreement that must be approved by the Labour Court.
- For night workers whose work involves special hazards or heavy physical or mental strain - an absolute limit of 8 hours in a 24 hour period during which they perform night work.

**Exceptional or Unforeseeable Circumstances**

The Act permits exemption from the rest provisions if there are exceptional, unusual and unforeseeable circumstances. Equivalent compensatory rest must be taken within a reasonable period of time.

**Shift and Split Shift Working**

The Act provides for automatic exemption from the daily and weekly rest period provisions for shift workers when they change shift and for workers on split shifts. Equivalent compensatory rest must be taken within a reasonable period of time.

**Exemption by Regulation**

Certain categories may be exempted from the rest provisions by regulation including:

- Categories of employees in the sectors set out in the Organisation of Working Time (General Exemptions) Regulations, 1998 (S.I. No. 21 of 1998) may, subject to receiving equivalent compensatory rest, be exempted from the rest provisions of the Act.

- Exemption by **Collective Agreement** - Any sector or business may be exempted from the statutory rest times by a collective agreement approved by the Labour Court, subject to equivalent compensatory rest being made available to the employee. Collective agreements to vary the rest times may be drawn up between management and a **trade union** or other representative staff body in any business, organisation or enterprise.

These exemptions are subject to equivalent compensatory rest being made available to the employee. This means that, although employers may operate a flexible system of working, employees must not lose out on rest. In these circumstances rest may be postponed temporarily and taken within a reasonable period of time.

### **Disputes**

Employees can make a complaint under the legislation to a Rights Commissioner who may do one of the following:

- Declare that the complaint was or was not well founded.
- Require the employer to comply with the relevant provision.
- Require the employer to pay the employee compensation an amount as is just and equitable having regard to all the circumstances, but not exceeding 2 years remuneration.

Complaints need to be made within 6 months of the contravention to which the complaint relates. This may be extended to 12 months if the Rights Commissioner is satisfied that the failure to present the complaint was due to reasonable cause.

A party may appeal a decision from a Rights Commissioner to the Labour Court not later than 6 weeks after the date upon which it was communicated to the party.

# INFORMATION AND CONSULTATION

The regulations under the Employees (Provision of Information and Consultation) Act 2006 provides for the establishment of a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings with at least 50 employees.

## Key Dates

The Employees (Provision of Information and Consultation) Act 2006 will apply to:

- Undertakings with at least 150 employees from 4 September 2006.
- Undertakings with at least 100 employees from 23 March 2007.
- Undertakings with at least 50 employees from 23 March 2008.

The number of employees in the undertaking should be the average number of employees employed in the undertaking during the 2 years before the date of enforcement.

Until recently, employers in Ireland were only obliged to consult with employees in very limited circumstances, such as collective redundancies and **transfer of undertakings**. Those obligations will remain intact, however the provisions of the Employees (Provision of Information and Consultation) Act 2006, provides employees in undertakings of at least 50 employees with the right to information and consultation in the workplace on a greater number of issues.

## Right to Information and Consultation

At present there are three options available to employers in complying with the Act.

(1) Employers have the option under the Act of putting in place pre-existing agreements

- on or before 4 September 2006 (companies with >150 employees),
- on or before 23 March 2007 (companies with >100 employees) and
- on or before 23 March 2008 (companies >50 employees).

These agreements can be tailor-made to suit the culture and circumstances of the company.

(2) Alternatively, the Act gives employees the right to request that an employer sets up an information and consultation procedure; **once 10 per cent of employees (subject to a minimum of 15 and a maximum of 100) make such a request**, an employer must enter into negotiations to agree a procedure with employees.

(3) A third option is provided in the 'Standard Rules' of the Act, which involve the setting up of an Information and Consultation Forum. This Forum comprises elected **employee representatives**.

### **What Information?**

The Act obliges employers to provide information and consultation on issues such as the following:

- Recent and probable development of the employer's activities and economic situation, e.g. restructuring, expansion etc.
- Decisions likely to lead to substantial changes in work organisation or in contractual relations.
- Situation, structure and probable development of employment and any anticipatory measures envisaged e.g. redundancies.

Information must be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.

**Note:** There is no automatic right to information and consultation. The process must be triggered by the employees. As outlined above a request must be made by 10 per cent of the employees, subject to a minimum of 15 and a maximum of 100 (the "Employee Threshold").

A request for information and consultation can also be made to the Labour Court, which will then notify the employer, request relevant information from the parties and issue a notification confirming whether or not the request meets the Employee Threshold.

### **Pre-existing Agreements**

When organisations decide to put an arrangement in place prior to the relevant date of effect of the legislation, labelled a pre-existing agreement under the Act, they must ensure it meets minimum requirements to comply. The 2006 Act allows that where a pre-existing agreement is in place prior to the introduction of the legislation, then that agreement may remain in place, once it complies with the provisions of the Act. The requirements for a pre-existing agreement to comply with the legislation are as follows:

The agreement,

- Must be in writing.
- It should be dated and signed by the employer and approved by employees.
- It must be applicable to all employees to whom the agreement relates, and
- It should be available for inspection by those it affects.

Employee approval will be obtained where:

- A majority of the employees who cast a preference are in favour of the terms of the Agreement.
- A majority of employee representatives approve the Agreement in writing.
- Any other procedure agreed to by the parties.



- A Negotiated Agreement may be renewed by the parties within 6 months of its expiration.

The employer must ensure that this procedure is confidential and capable of independent verification and of being used by all employees.

A pre-existing agreement must include the following:

- the duration of the agreement and the procedure, if any, for its review
- the subjects for information and consultation
- the method by which information is to be provided, including as to whether it is to be provided directly to employees or through one or more employees' representatives and
- the method by which consultation is to be conducted, including as to whether it is to be conducted directly with employees or through one or more employees' representatives.

A pre-existing agreement will be presumed to be compliant unless proven otherwise. The agreement will remain in force until it expires as per the agreement, or is renewed, or until it is brought to an end by agreement of the parties, or as per the terms of the agreement. This option offers the parties some degree of flexibility as the Agreement may be tailored to meet their specific requirements.

### **Negotiated Agreement**

An agreement establishing information and consultation arrangements may be negotiated by the employer and the employees, or their representatives, or both. A negotiated agreement has to be:

- in writing and dated
- signed by the employer
- approved by the employees
- applicable to all employees to whom the agreement relates, and
- available for inspection by those persons and at the place agreed between the parties.

The agreement will be regarded as having been approved by employees:

- where a majority of those employees employed in the undertaking who cast a preference do so in favour of the terms of the agreement,
- where a majority of employee representatives, elected or appointed for the purposes of negotiation under this legislation, approve the agreement in writing, or
- where the result of employing any other procedure agreed to by the parties for determining whether this agreement has been so approved, demonstrates that it has been approved.

The employer has to ensure that the procedure for the casting a preference is confidential and capable of independent verification and of being used by all employees.

A negotiated agreement should include reference to the following matters:

- the duration of the agreement and the procedure, if any, for its renegotiation
- the subjects for information and consultation
- the method and timeframe by which information is to be provided, including whether it is to be provided directly to employees or through one or more employees' representatives
- the method and timeframe by which consultation is to be conducted, including whether it is to be conducted directly with employees or through one or more employees' representatives, and
- the procedure for dealing with confidential information.

At any time before a negotiated agreement expires, or within 6 months after its expiry, the parties may renew it for any further period they think fit. A negotiated agreement renewed within a 6 month period shall be deemed to have remained in force from the date it would otherwise have expired.

### **Standard Rules Agreement**

Where the parties either agree, refuse to enter into negotiation within 3 months of receiving a request or fail to reach agreement on a Negotiated Agreement during a period of 6 months, an Information and Consultation Forum must be established in accordance with the Standard Rules.

The Standard Rules set out procedures for the setting up of a Forum which will comprise of elected employee representatives. In the absence of an election, employee representatives should be appointed by employees or the employer with the agreement of the employees. The employer must arrange for the election process and cover the cost of it. The Forum should have at least 3 but not more than 30 members and can adopt its own rules subject to the following:

- Meeting arrangements must be agreed by the employer and employee/employees representatives.
- Minutes of the meetings must be approved by both parties.
- The Forum will be entitled to meet prior to any meeting without the employer being present.
- Members of the Forum are to inform employees of the content and outcome of the Forum meetings.
- The Forum should have the right to meet with the employer at least twice a year.
- The Forum is to be provided with any financial resources necessary and reasonable to enable it carry out its duties.
- A Standard Rules Agreement may be subject to review after two years and, from then on, as agreed between the parties. In circumstances where the number of employees falls under the Employee Threshold for a period of 12 months the Forum will be dissolved.

**Enforcement**

The Act provides for the Labour Court to investigate disputes that arise under the legislation and provides for the enforcement of Labour Court determinations by the Circuit Court. It also provides strong protections for employees' representatives in the performance of their duties under the Act.

The legislation provides for penalties of up to €3,000 or imprisonment for a term not exceeding 6 months or both on summary conviction for offences under the Act and on conviction on indictment to a fine not exceeding €30,000 or imprisonment for a term not exceeding 3 years or both.